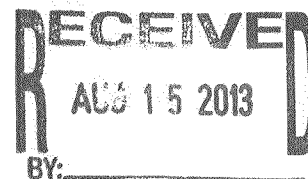




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CERTIFIED MAIL  
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August 12, 2013

Ms. Stephanie Handeland  
Industrial Division  
Minnesota Pollution Control Agency  
520 Lafayette Road North  
St. Paul, MN 55155

Re: Draft Staff Recommendation for 'Waters Used for Production of  
Wild Rice' Downstream of the U. S. Steel Minntac Tailings Basin

Dear Ms. Handeland:

This letter is transmitted as U. S. Steel's response to your request for feedback on the "Draft Staff Recommendation for 'waters used for production of wild rice' downstream of the US Steel Minntac tailings basin" ("Draft Recommendation"). U. S. Steel appreciates the opportunity to comment on the staff recommendation.

U. S. Steel has worked cooperatively with the MPCA and other regulatory agencies and interested parties for several years on matters related to reducing sulfate discharges from its operations and the protection of wild rice. That work has included installation of a seep collection and return system on the Sand River side of the basin, monitoring of the Twin Lakes since 2010, and groundwater modeling. In addition permitting has been ongoing for installation of dry controls on Agglomerator Line 6, research continues on the Line 3 scrubber blowdown system and engineering is ongoing for the #6 sump alternate make up water project. U.S. Steel recognizes the importance of this work and is committed to continuing it.

Regarding the Draft Recommendation, it is premature for the MPCA to determine that Little Sandy Lake and Sandy Lake (the "Twin Lakes") are "waters used for the production of wild rice." U. S. Steel agrees with the statement in the Draft Recommendation that to effectively apply the 10 mg/L sulfate standard contained in Minnesota Rule 7050.0224, subpart 2, the MPCA needs to determine whether a particular water is a "water used for production of wild rice." The process for making that determination was established in law in 2011. The MPCA has not yet completed the required steps contained in that law to determine which bodies of water are subject to water quality standards applicable to wild rice.

The MPCA and other interested groups worked with legislators in 2011 to establish a process to designate bodies of water to which wild rice water quality standards apply. That legislative

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activity arose from uncertainty regarding whether the sulfate standard in Minnesota Rule 7050.0224, subpart 2 applies to natural stands of wild rice (there is little disagreement over its applicability to cultivated wild rice). The final legislative language, which was negotiated and agreed to by the MPCA, was passed by the legislature and signed into law by the Governor. It is contained in MN Session Laws 2011, First Special Session, Chapter 2, Article 4 ("2011 Law").

The Minnesota Court of Appeals has recognized the MPCA's duty under the 2011 law to confirm in rule the applicability of the sulfate standard to natural stands of wild rice. When the Minnesota Chamber of Commerce challenged the MPCA application of the sulfate standard, the court refused to review the MPCA's application of the standard due to the 2011 law. The court said:

We decline to review any proposed interpretation or application of the Wild Rice Rule because the Chamber's claims as to the agency's application of the rule and its scope are essentially moot. *The 2011 legislation directs the agency to amend the Wild Rice Rule to confirm that it applies to both natural and commercial stands of wild rice and to specify the bodies of water to which the rule applies and the specific time period during which it applies. 2011 Minn. Laws 1st Spec. Sess. ch. 2, art. 4, § 32, at 71–73. We decline to consider the rule's application when the legislature has already addressed the issue.*<sup>1</sup>

The 2011 law directs the MPCA to take several steps to determine whether any body of water, including any body of water near the Minntac facility, is subject to a water quality standard to protect wild rice. First, the MPCA is required to "adopt and implement a wild rice research plan using the money appropriated to contract with appropriate scientific experts." That research is ongoing. The law directs the MPCA to take several steps when the wild rice research is complete:

#### Sec. 32. WILD RICE RULEMAKING AND RESEARCH.

- (a) Upon completion of the research referenced in paragraph (d), the commissioner of the Pollution Control Agency shall initiate a process to amend Minnesota Rules, chapter 7050. The amended rule shall:
  - (1) address water quality standards for waters containing natural beds of wild rice, as well as for irrigation waters used for the production of wild rice;
  - (2) designate each body of water, or specific portion thereof, to which wild rice water quality standards apply; and
  - (3) designate the specific times of year during which the standard applies.

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<sup>1</sup> Emphasis added. Minnesota Chamber of Commerce v. Minnesota Pollution Control Agency, File No. 62-CV-10-11824 (Minnesota Court of Appeals unpublished)

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In addition, the law clearly describes the process the MPCA must use to establish criteria for identifying waters containing natural beds of wild rice as waters subject to a wild rice standard. According to the 2011 Law:

- (b) "Waters containing natural beds of wild rice" means waters where wild rice occurs naturally. Before designating waters containing natural beds of wild rice as waters subject to a standard, the commissioner of the Pollution Control Agency shall establish criteria for the waters after consultation with the Department of Natural Resources, Minnesota Indian tribes, and other interested parties and after public notice and comment. The criteria shall include, but not be limited to, history of wild rice harvests, minimum acreage, and wild rice density.

The MPCA has not yet completed the wild rice research plan, much less the subsequent rulemakings to address wild rice water quality standards and designate each body of water to which wild rice water quality standards apply. The Draft recommendation is therefore premature.

We understand that the MPCA has taken some preliminary steps to prepare criteria to designate waters subject to water quality standards to protect wild rice but it is not clear how those criteria might have been applied to produce the Draft Recommendation. For example, we understand that the MPCA and USEPA Region V have proposed a joint priority for 2013 regarding the state sulfate water quality standard. That joint priority statement included "a commitment from MPCA to develop methodology to assess whether surface waters meet the State's sulfate water quality standards applicable to wild rice production waters, and for designating waters as wild rice production waters." The document goes on to state that "MPCA has communicated its intention to develop a sulfate water quality assessment methodology for use in the assessment of state waters for the 2014 303(d) list. This methodology would answer questions including where and when the sulfate standard applies, and the minimum number of measurements needed for an assessment decision. Making this a joint priority would formalize that commitment."

The Draft Recommendation does not provide any detail on whether the MPCA has finalized a draft methodology. And neither the Draft Recommendation nor any other information available to U. S. Steel indicates how the processes required in the 2011 law will be followed in producing the methodology as a "joint priority" with USEPA Region V.

The MPCA has discussed criteria for designating waters used for the production of wild rice with the Wild Rice Standards Study Advisory Committee, which includes a representative of U. S. Steel. The Minnesota Chamber Wild Rice Task Force submitted comments on those criteria on January 17, 2013. The Draft Recommendation does not include any information regarding whether the MPCA's criteria have been finalized and whether those criteria include any revisions based on the Minnesota Chamber of Commerce comments.

In addition, U. S. Steel has in the past respectfully suggested that the MPCA must carefully consider the applicability of its water quality standards regarding discharge limits for sulfates as they related to wild rice and we renew that suggestion. Minnesota has two water quality standards applicable to wild rice. The first, contained in Minnesota Rules 7050.0224 subpt. 1, provides a narrative standard that is applicable to waters that have been specifically identified

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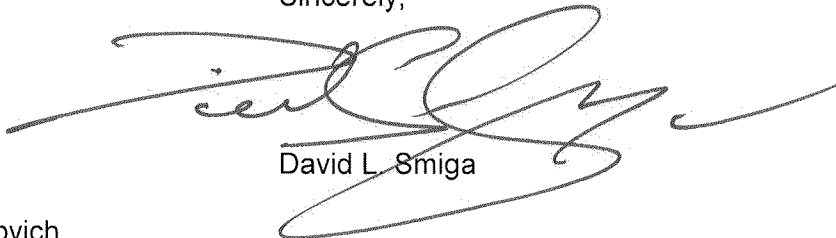
[WR] and listed in Minnesota Rules 7050.0470. The second, contained in Minnesota Rules 7050.0224 subpt. 2, provides the standard for Class 4A waters of the state, stating that the quality of those waters "shall be such as to permit their use for irrigation."

Those two standards clearly establish standards for discharges to receiving waters that meet one of two criteria: specific designation as WR in Minnesota rules or use of the receiving water for irrigation. None of downstream receiving waters of Minntac are designated as WR in the Minnesota Rules. In addition, the term "irrigation" is not clearly defined within Minnesota Rules but there is no suggestion that any waters near Minntac are used for irrigation of wild rice. The MPCA must carefully assess its authority to apply those standards to discharges to receiving waters that are neither designated as WR nor used for irrigation.

Where the standards in Minnesota Rules 7050.0224 subpt. 2 properly apply to a discharge, the MPCA must complete its work to establish clearer standards for permittees and the public regarding establishment of a discharge limit for sulfates. The MPCA must, as required in the 2011 Law, establish criteria to be used to identify when water is "used for production of wild rice" and a scientifically justified definition of the periods when wild rice may be affected by certain variables that may include elevated sulfate levels. Today permittees and the public cannot predict how those terms will be applied by the MPCA. This uncertainty is magnified by the nearly complete lack of application of the standard in water quality permits since the standard was adopted in 1973.

In conclusion, it is clear that the preparation of the Draft Recommendation is not consistent with the 2011 Law and must be withdrawn by the MPCA. U.S. Steel has committed significant staff and financial resources to working the MPCA and others on important issues regarding sulfates in the environment and wild rice protection and will continue that work. We look forward to working with the MPCA on its ongoing wild rice research plan and the subsequent rulemakings to modernize the Minnesota water quality standards to protect wild rice. Once those steps have been completed we will be prepared to discuss the applicability of those standards to waters near U.S. Steel facilities.

Sincerely,

A handwritten signature in black ink, appearing to read "David L. Smiga", is written over a horizontal line.

David L. Smiga

DLS/nms

cc: Chrissy L. Bartovich  
Tishie Woodwell

(456492)